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9 Attorneys for Complainant

10 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12
13 In the Matter of the Accusation Against:

14 ROMEL A. POSADA, P.T.
71 Via Cartaya
15 San Clemente, CA 92673

16 Physical Therapist License No. PT 18668

17 Respondent.

Case No. 1D 200464104

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the Physical Therapy Board of California of the
20 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement
21 and Disciplinary Order which will be submitted to the Board for approval and adoption as the
22 final disposition of the Accusation in the above-entitled matter.

23 PARTIES

24 1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical
25 Therapy Board of California. He brought this action solely in his official capacity and is
26 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
27 by Douglas Lee, Deputy Attorney General.

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2. ROMEL A. POSADA, P.T. (Respondent) is represented in this proceeding by attorney Melanie Balestra, Esq., whose address is 36 Santa Comba, Irvine, CA 92606.

3. On or about November 12, 1992, the Physical Therapy Board of California issued Physical Therapist Certificate No. PT 18668 to Respondent. The Physical Therapist Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 1D 2004 64104 and will expire on March 31, 2008, unless renewed.

JURISDICTION

4. Accusation No. 1D 2004 64104 was filed before the Physical Therapy Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on June 5, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 1D 2004 64104 is attached as Exhibit A and incorporated herein by reference.

ADVICE AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1D 2004 64104. Respondent has also carefully read, fully discussed with the counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in
3 Accusation No. 1D 2004 64104, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physical Therapist Certificate.

5 9. For the purpose of resolving the Accusation without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up
8 his right to contest those charges.

9 10. Respondent agrees that his Physical Therapist Certificate is subject to
10 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
11 Disciplinary Order below.

12 CIRCUMSTANCES IN MITIGATION

13 11. Respondent has never been the subject of any disciplinary action in
14 California. He is admitting responsibility at an early stage in the proceedings.

15 CONTINGENCY

16 12. This stipulation shall be subject to approval by the Physical Therapy Board
17 of California. Respondent understands and agrees that counsel for Complainant and the staff of
18 the Physical Therapy Board of California may communicate directly with the Board regarding
19 this stipulation and settlement, without notice to or participation by Respondent or his counsel.
20 By signing the stipulation, Respondent understands and agrees that he may not withdraw his
21 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
22 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
23 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
24 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
25 further action by having considered this matter.

26 13. The parties understand and agree that facsimile copies of this Stipulated
27 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
28 force and effect as the originals.

1 14. In consideration of the foregoing admissions and stipulations, the parties
2 agree that the Board may, without further notice or formal proceeding, issue and enter the
3 following Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY STIPULATED AND AGREED, based upon the above
6 stipulations and recitals, that the Board, upon its approval of the Stipulation herein set forth, may,
7 without further notice, enter a Decision whereby Respondent Romel A. Posada, as holder of
8 Physical Therapist Certificate No. PT 18668, shall by way of letter from the Board, be publicly
9 reprovod; provided, however, that said public reprovod is conditional upon Respondent's full
10 compliance with the following conditions precedent:

11 1. WRITTEN EXAMINATION ON THE LAWS AND REGULATIONS
12 GOVERNING THE PRACTICE OF PHYSICAL THERAPY. Within 90 days of the effective
13 date of this decision, Respondent shall take and pass the Board's written examination on the laws
14 and regulations governing the practice of physical therapy in California. If respondent fails to
15 pass the examination, Respondent shall be suspended from the practice of physical therapy until
16 a repeat examination is successfully passed.

17 2. COST RECOVERY. Respondent is ordered to reimburse the Board the
18 actual and reasonable prosecutorial costs in this matter of \$6030.00. Said costs shall be reduced,
19 however, and the remainder forgiven, if Respondent pays \$500.00 within ninety (90) days of the
20 effective date of the Decision. In the event Respondent fails to pay the ordered reimbursement
21 within 90 days of the effective date of this decision, the full amount of costs shall be immediately
22 due and payable. Failure to pay ordered amount of reimbursement, or any agreed upon payment,
23 may constitute a violation of this order. The filing of bankruptcy by Respondent shall not relieve
24 Respondent of his responsibility to reimburse the Board. If Respondent is in default of his
25 responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise
26 Tax Board, the Internal Revenue Service, or by any other means of attachment of earned wages
27 legally available to the Board. Failure to fulfill the obligation could also result in attachment to
28 the Department of Motor Vehicle registrations or license renewal.

1 3. FAILURE TO COMPLY WITH ORDER. A material breach by
2 Respondent of this order shall constitute unprofessional conduct and shall be a basis for further
3 disciplinary action by the Board. In such circumstances, Complainant may reinstate the
4 Accusation in Case No. 1D 2004 64104, file an amended accusation, and/or file a supplemental
5 accusation alleging any material breach of this order by Respondent as unprofessional conduct.

6 **OTHER MATTERS**

7 1. Upon full compliance with the conditions precedent set forth in this
8 Stipulation, Respondent's license shall be publicly reprovod by way of a letter from the Board,
9 which shall be in the same form as the letter attached hereto as Exhibit B.

10 2. It is not contrary to the public interest for Respondent to practice and/or
11 perform his duties as a physical therapist because he is subject to this disciplinary order.
12 Accordingly, it is not the intent of the Board that this order or the fact that Respondent has been
13 publicly reprovod shall be used as the sole basis for any third party payor to remove Respondent
14 from any list of approved providers.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Melanie Balestra, Esp. I understand the stipulation and the effect it will have on my Physical Therapist Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board of California.

DATED: November 7, 2007.

Original Signed By: _____
ROMEL A. POSADA, P.T.
Respondent

I have read and fully discussed with Respondent ROMEL A. POSADA, P.T. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: November 7, 2007.

Original Signed By: _____
MELANIE BALESTRA, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physical Therapy Board of California of the Department of Consumer Affairs.

DATED: November 7, 2007

EDMUND G. BROWN JR., Attorney General
of the State of California

STEVEN V. ALDER
Supervising Deputy Attorney General

Original Signed By: _____
DOUGLAS LEE
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2007800994
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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 200464104

ROMEL A. POSADA, P.T.
71 Via Cartaya
San Clemente, CA 92673

Physical Therapist License No. PT 18668

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 28, 2008.

It is so ORDERED January 29, 2008.

Original Signed By:
FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA
Nancy Krueger, PT, President

DEPARTMENT OF CONSUMER AFFAIRS